Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) *Request for mandatory classification review.* For a request for classified records to be processed under section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) *Mandatory review.* A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) *Scope.* All information classified under this or predecessor orders shall be subject to declassification review upon request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the Department will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) *Processing.* In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) *Other agency records.* When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) *Foreign government information.* When foreign government information is being considered for declassification, the declassifying agency is the agency that originally received or classified the information. The declassifying agency shall:

(1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;

(2) Determine whether the information is subject to section 1.6(d) (5), (6) or (8) of the Executive Order 12958;

(3) Consult with any other concerned agencies;

(4) Consult with the Department and/or the foreign government, as appropriate.

(h) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) *Appeals.* Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) *Appeals to the Interagency Security Classification Appeals Panel.* The Interagency Security Classification Appeals Panel shall publish in the FEDERAL REGISTER the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

(b) This provision does not:

(1) Amplify or modify the substantive criteria or procedures for classification; or

(2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which